

FILED
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS
2004 MAY 27 P 3:51
CIVIL ACTION NO.:

EXPERIENCE, INC.

Plaintiff

v.

CSO RESEARCH, INC.

Defendants

U.S. DISTRICT COURT
DISTRICT OF MASS.

04 11127 JLT

**MOTION TO SHORTEN TIME FOR
DEFENDANT TO RESPOND TO LIMITED DISCOVERY**

Plaintiff, Experience, Inc. ("Experience"), moves to shorten the time for defendant, CSO Research, Inc. ("CSO"), to respond to limited discovery, and in support thereof states as follows:

1. Experience has filed herewith a Complaint alleging copyright infringement, seeking injunctive relief and damages.
2. Specifically, as set forth in the Complaint, and in the Affidavits of Lisa Mastrangelo ("Mastrangelo Aff.") and Robert Carbonaro ("Carbonaro Aff.") filed herewith, on or about August 7, 2001, Experience executed an Asset Purchase Agreement with Brass Ring, Inc. ("Brass Ring") and certain of its subsidiaries, including Academic Software, Inc. ("ASI"). Mastrangelo Aff., ¶ 2. As part of that agreement, Experience acquired from Brass Ring and ASI certain assets, including all right, title and interest in a family of computer software products known as "1stPlace!" Mastrangelo Aff., ¶ 2.
3. Over time, Experience transitioned 1stPlace! software users to an Experience developed product. Carbonaro Aff., ¶ 3

4. Through a combination of its own marketing efforts and acquisitions, today Experience has a client base of approximately 440 clients, approximately 120 of which are former users of the 1stPlace! software. Carbonaro Aff., ¶ 4.

5. In or around early 2004, it became apparent to Experience that CSO Research, Inc. ("CSO") was targeting Experience's former 1stPlace! user customers by marketing a new software package known as "Interfase CS," which, upon information and belief, is derived from, and substantially similar to, the 1stPlace! software that is owned by Experience. Carbonaro Aff., ¶ 5. CSO's website states that its:

roots stem nearly 20 years from the team that founded and built Academic Software. Career services folks at most campuses will recognize the name and history of our previous company, and its premier system, 1stPlace!. ASI grew to become the nation's leader in career services automation with installed systems at hundreds of domestic and international universities, and a reputation for client services unsurpassed by other organizations.

CSO's founder and president, Erik Mulloy, was the original developer of 1stPlace!. Carbonaro Aff., ¶ 5. Finally, and most significantly, in speaking with customers, our sales representatives have been told that CSO's Interfase CS product is "very similar" to 1stPlace!. Carbonaro Aff., ¶ 5.

6. As a result of CSO's development of Interfase CS as a successor to 1stPlace!, and its efforts to exploit the similarities between 1stPlace! and Interfase CS, in order to market and sell the software to Experience's former 1stPlace! user clients, Experience has already lost approximately 20 of its former 1stPlace! user clients, and is in jeopardy of losing additional clients as a result of CSO's wrongful conduct. Carbonaro Aff., ¶ 6.

7. Experience expects to move for a preliminary injunction seeking to halt CSO's infringement of its rights in the 1stPlace! software by its continuing development, use and sale of access to the Interfase CS software. Experience believes however that its request for an

injunction should be considered based on a complete record. Interfase CS is an interactive web-based product, and access is password protected. Carbonaro Aff., ¶ 7. In order to present the full extent of the similarities between the software, Experience requires unrestricted, full and complete access to the live and online version of the Interfase CS software. Carbonaro Aff., ¶ 7.

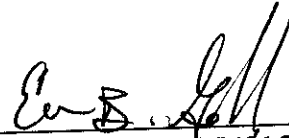
8. Accordingly, Experience seeks to serve a limited request for production of documents on CSO requesting (i) a password and unrestricted, full and complete access to the current, online version of Interfase CS, as well as any subsequent versions and (ii) a report itemizing any and all changes made to the user interface at any time since the initial release of Interfase CS. (Plaintiff's First Request For Production of Documents and Things to the Defendant CSO Research, Inc. is attached hereto as Exhibit A).

9. The Court has the authority to shorten the time in which a party is required to respond to discovery pursuant to Fed. R. Civ. P. 34, which provides that "[a] shorter...time may be directed by the court" for a party to respond to a request for production of documents. The Court also has the authority pursuant to Local Rule 26.2(A) to permit a party to initiate discovery in advance of the mutual obligation to exchange initial disclosures called for by Fed. R. Civ. P. 26(a)(1). Experience's proposed order is attached hereto as Exhibit B.

WHEREFORE, Experience moves for an order requiring CSO to respond to Experience's discovery requests served with the Complaint within five (5) business days of the Court's allowance of this motion.

EXPERIENCE, INC.

By its attorneys,

A handwritten signature in black ink, appearing to read "Eric B. Goldberg", is written over a horizontal line.

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